# Perdana Industri Holdings Bhd v Abdul Mulok bin Awang Damit

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D3–22–1046 OF 1997
ZULKEFLI J
12 JULY 2003

***Civil Procedure*** *— Stay of proceedings — Application for — Whether court could proceed to hear the defendant's application notwithstanding the existence of a moratorium by virtue of the appointment of the special administrator — Pengurusan Danaharta Nasional Berhad Act 1998 s 41*

The defendant had applied vide encl (27) for all execution proceedings by the plaintiff against the defendant be stayed until a final decision was obtained from the Court of Appeal against the order made by the High Court on 4 December 1998. On the date fixed for the hearing of the defendant's application on 18 July 2002, learned counsel for the plaintiff raised a preliminary issue for a decision of the High Court as to whether the court could proceed to hear the defendant's application notwithstanding that there existed a moratorium which took effect by virtue of the appointment of the special administrator under s 41 of the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act').

**Held**, deciding there was no legal impediment to hearing the defendant's application for a stay:

In the present case, there was no legal impediment for the court to proceed with hearing the defendant's application for a stay. The plaintiff had already commenced the proceedings herein and obtained judgment against the defendant. The proceeding initiated by the plaintiff was before the appointment of the special administrator. Therefore, the special administrator was by virtue of the powers granted to him entitled to take steps to enforce the judgment. The defendant likewise was entitled to apply for a stay or take steps to counter any action taken by the special administrator and the High Court was not precluded from hearing the matter. Thus, the court could proceed to hear the defendant's application notwithstanding that there existed a moratorium which took effect by virtue of the appointment of the special administrator under s 41 of the Act (see p 179B, D–F); *Franky Construction Sdn Bhd v MEC Industrial Park Sdn Bhd* [2002] 6 MLJ 212 followed.

**[Bahasa Malaysia summary**

Defendan telah memohon melalui lampiran (27) agar semua perlaksanaan prosiding oleh plaintif terhadap defendan digantungkan sehingga satu keputusan diperolehi dari Mahkamah Rayuan terhadap perintah yang dibuat oleh Mahkamah Tinggi pada 4 Disember 1998. Pada tarikh yang ditetapkan untuk perbicaraan permohonan defendan

pada 18 Julai 2002, peguam bijaksana bagi pihak plaintif telah menimbulkan satu persoalan penting untuk keputusan Mahkamah Tinggi berhubung sama ada mahkamah boleh terus mendengar permohonan defendan meskipun terdapat satu moratorium yang berkuatkuasa menurut perlantikan pentadbir khas di bawah s 41 Akta Pengurusan Danaharta Nasional Berhad 1998 ('Akta tersebut').

**Diputuskan**, memutuskan tiada apa-apa halangan untuk mahkamah mendengar permohonan defendan:

Dalam kes semasa, tidak terdapat apa-apa halangan untuk mahkamah terus mendengar permohonan defendan untuk satu penggantungan. Plaintif telahpun memulakan prosiding dan mendapat penghakiman terhadap defendan. Prosiding yang dimulakan oleh plaintif adalah sebelum perlantikan pentadbir khas. Dengan itu, pentadbir khas menurut kuasa-kuasa yang diberikan kepadanya berhak untuk mengambil langkah-langkah untuk menguatkuasakan penghakiman tersebut. Defendan juga berhak untuk memohon satu penggantungan atau mengambil langkah-langkah untuk mematahkan apa-apa tindakan yang diambil oleh pentadbir khas dan Mahkamah Tinggi tidak terkecuali dari mendengar perkara tersebut. Oleh demikian, mahkamah boleh meneruskan untuk mendengar permohonan defendan meskipun terdapat satu moratorium yang berkuatkuasa menurut perlantikan pentadbir khas di bawah s 41 Akta tersebut (lihat ms 179B, D–F); *Franky Construction Sdn Bhd v MEC Industrial Park Sdn Bhd* [2002] 6 MLJ 212 diikut.]

**Notes**

For cases on application for a stay of proceedings, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 5503–5513.

**Cases referred to**

*Franky Construction Sdn Bhd v MEC Industrial Park Sdn Bhd* [2002] 6 MLJ 212 (folld)

*Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd* [2002] 5 MLJ 72 (refd)

**Legislation referred to**

Pengurusan Danaharta Nasional Berhad Act 1998 ss 30, 41(1)(a), (b), (c), (d), (e), (f), (g), Second Schedule para 8

Rules of the High Court 1980 O 14

*Joseph Yeo* (*Joseph Yeo*) for the plaintiff.

*Jagdish Kaur* (*Rakhbir Singh & Co*) for the defendant.

**Zulkefli J**: This is the defendant's application as in encl (27) for all execution proceedings by the plaintiff against the defendant be stayed until

a final decision is obtained from the Court of Appeal against the order made by this court dated 4 December 1998. The relevant facts of this case are as follows:

(1) On 18 October 1997, the plaintiff herein commenced proceedings to recover a sum of RM2.5m from the defendant.

(2) On 27 May 1998, the learned senior assistant registrar granted judgment for the plaintiff s application pursuant to O 14 of the Rules of the High Court 1980 against the defendant for the sum claimed together with interest and costs.

(3) The defendant appealed to the judge in chambers. On 4 December 1998, the learned judge dismissed the appeal with costs. The defendant has appealed to the Court of Appeal.

(4) On 28 July 1999, Lim San Peen was appointed a special administrator of the plaintiff. Yap Wai Fun was appointed on 10 October 2001. The appointments were made pursuant to the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act').

(5) Pursuant to s 41 of the Act, on the appointment of the special administrators, a moratorium took effect.

(6) During the moratorium certain action may not be taken or done in respect of the plaintiff without the prior written consent of Pengurusan Danaharta Nasional Berhad. This is set out in s 41(1)(a) to (g) of the Act.

(7) The moratorium is for a period of 12 months and may be extended from time to time.

(8) The moratorium in respect of the plaintiff was last extended from 27 July 2002 to 28 July 2003 (see affidavit of Lim San Peen affirmed on 12 February 2002).

(9) On 8 July 2002, the defendant filed an application for a stay of execution of the judgment obtained against him.

On the date fixed for the hearing of the defendant's application in encl (27) on 18 July 2002, learned counsel for the plaintiff raised a preliminary issue for a decision of this court as follows:

> whether the court can proceed to hear the defendant's application notwithstanding that there exist a moratorium which took effect by virtue of the appointment of the special administrator under section 41 of the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act').

*Decision of the court*

At the outset, I wish to state that the Act is a social legislation necessitated by the effect of the Asian economic crisis in 1998 (see the case of *Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd* [2002] 5 MLJ 720). It is aimed amongst others to assist the business sector with its financially distressed enterprises. This is achieved through the provisions of s 41 of the Act. When special administrators are appointed to a company,

like the plaintiff, the company is for the duration of the moratorium protected from, inter alia, any winding up petition (see s 41(1)(a) of the Act on the appointment of any receiver or manager). Further, no proceeding or execution may be commenced or continued without the prior written consent of Pengurusan Danaharta Nasional Berhad (see s 41(1)(e) of the Act). It is to be noted that the powers of the special administrators are provided under s 30 and the Second Schedule of the Act which includes the power to bring or defend any action or legal proceedings in the name of and on behalf of the affected person (see para 8 of Second Schedule of the Act).

I am of the view that in the present case, there is no legal impediment for the court to proceed with hearing the defendant's application for a stay. The said s 30 and the Second Schedule of the Act allow the plaintiff to defend any action or legal proceedings through the special administrators. The special administrators are empowered to bring any action or legal proceeding for and on behalf of the plaintiff. Likewise, they are also empowered to defend any action or other legal proceedings.

It is my considered view that the purpose of the moratorium is to give the company concerned a breathing space pending it setting its house in order. That is why no winding up petition is allowed against the company and no proceeding or execution may be commenced without the prior written approval of Pengurusan Danaharta Nasional Berhad. In the instant case, I find that the plaintiff has already commenced the proceedings herein and obtained judgment against the defendant. It is a proceeding initiated by the plaintiff before the appointment of the special administrator. Therefore, the special administrator is by virtue of the powers granted to him entitled to take steps to enforce the judgment. The defendant likewise is entitled to apply for a stay or take steps to counter any action taken by the special administrator and this court is not precluded from hearing the matter (see *Franky Construction Sdn Bhd v MEC Industrial Park Sdn Bhd* [2002] 6 MLJ 212). In the circumstances of this case, it is my decision that the court can proceed to hear the defendant's application notwithstanding that there exists a moratorium which took effect by virtue of the appointment of the special administrator under s 41 of the Act.

*No legal impediment. Court to hear defendant's application for a stay notwithstanding the moratorium.*

Reported by Ezatul Zuria Azhari